

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OWEN NABOR YAP
737 Santa Ynez Street
Sunnyvale, CA 94085

**Certified Public Accountant Certificate No.
58295**

Respondent.

Case No. AC-2012-28

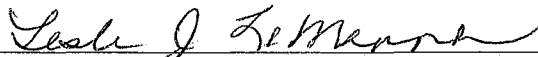
OAH No. 2013010570

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 31, 2013.

It is so ORDERED August 1, 2013.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **OWEN NABOR YAP**
13 **737 Santa Ynez Street**
Sunnyvale, CA 94085

14 **Certified Public Accountant Certificate No.**
15 **58295**

16 Respondent.

Case No. AC-2012-28

OAH No. 2013010570

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
22 Accountancy. She brought this action solely in her official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Shana A. Bagley,
24 Deputy Attorney General.

25 2. Respondent Owen Nabor Yap (Respondent) is represented in this proceeding by
26 attorney Kurt Seibert, whose address is: Law Office of Kurt J. Seibert, 111 North Market Street,
27 Suite 300, San Jose, California 95113-1116.
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1 3. On or about February 1, 1991, the California Board of Accountancy issued Certified
2 Public Accountant Certificate No. 58295 to Owen Nabor Yap (Respondent). The Certified Public
3 Accountant Certificate will expire on December 31, 2013, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. AC-2012-28 was filed before the California Board of Accountancy
6 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 May 21, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

9 5. A copy of Accusation No. AC-2012-28 is attached as exhibit A and incorporated by
10 reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. AC-2012-28. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
20 the attendance of witnesses and the production of documents; the right to reconsideration and
21 court review of an adverse decision; and all other rights accorded by the California
22 Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. AC-2012-28.

1 10. Respondent agrees that his Certified Public Accountant Certificate is subject to
2 discipline and he agrees to be bound by the CBA's probationary terms as set forth in the
3 Disciplinary Order below.

4 **CIRCUMSTANCES IN MITIGATION**

5 11. Respondent Owen Nabor Yap has never been the subject of any disciplinary action.
6 He is admitting responsibility at an early stage in the proceedings.

7 **CONTINGENCY**

8 12. This stipulation shall be subject to approval by the California Board of Accountancy.
9 Respondent understands and agrees that counsel for Complainant and the staff of the California
10 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
11 settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
14 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
15 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
16 between the parties, and the CBA shall not be disqualified from further action by having
17 considered this matter.

18 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
19 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
20 effect as the originals.

21 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.
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15. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 58295 issued to Respondent Owen Nabor Yap (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Suspension

Certified Public Accountant Certificate No. 58295 issued to respondent Owen Nabor Yap is suspended for 120 days. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Cost Reimbursement

Respondent shall reimburse the CBA \$6,500.00 for its investigation and prosecution costs. The payment shall be made in quarterly payments (due with quarterly written reports), the final payment being due six months before probation is scheduled to terminate.

4. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the CBA or its representatives.

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1 **5. Personal Appearances**

2 Respondent shall, during the period of probation, appear in person at interviews/meetings as
3 directed by the CBA or its designated representatives, provided such notification is accomplished
4 in a timely manner.

5 **6. Comply With Probation**

6 Respondent shall fully comply with the terms and conditions of the probation imposed by
7 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
8 its monitoring and investigation of the respondent's compliance with probation terms and
9 conditions.

10 **7. Practice Investigation**

11 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
12 professional practice. Such a practice investigation shall be conducted by representatives of the
13 CBA, provided notification of such review is accomplished in a timely manner.

14 **8. Comply With Citations**

15 Respondent shall comply with all final orders resulting from citations issued by the
16 California Board of Accountancy.

17 **9. Tolling of Probation for Out-of-State Residence/Practice**

18 In the event respondent should leave California to reside or practice outside this state,
19 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
20 California residency or practice outside the state shall not apply to reduction of the probationary
21 period, or of any suspension. No obligation imposed in this Stipulation, including requirements
22 to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be
23 suspended or otherwise affected by such periods of out-of-state residency or practice except at the
24 written direction of the CBA.

25 **10. Violation of Probation**

26 If respondent violates probation in any respect, the CBA, after giving respondent notice and
27 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
28 stayed. If an accusation or a petition to revoke probation is filed against respondent during

1 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
2 probation shall be extended until the matter is final.

3 The CBA's Executive Officer may issue a citation under California Code of Regulations,
4 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
5 licensee on probation.

6 **11. Completion of Probation**

7 Upon successful completion of probation, respondent's license will be fully restored.

8 **12. Ethics Continuing Education**

9 Respondent shall complete four hours of continuing education in course subject matter
10 pertaining to the following: a review of nationally recognized codes of conduct emphasizing how
11 the codes relate to professional responsibilities; case-based instruction focusing on real-life
12 situational learning; ethical dilemmas facing the accounting profession; or business ethics, ethical
13 sensitivity, and consumer expectations (within a given period of time or prior to resumption of
14 practice). Courses must be a minimum of one hour as described in California Code of
15 Regulations Section 88.2 (Courses will be passed prior to resumption of practice where license
16 has been suspended or where otherwise appropriate).

17 If respondent fails to complete said courses within the time period provided, respondent
18 shall so notify the CBA and shall cease practice until respondent completes said courses, has
19 submitted proof of same to the CBA, and has been notified by the CBA that he or she may
20 resume practice. Failure to complete the required courses no later than 100 days prior to the
21 termination of probation shall constitute a violation of probation. These courses shall be in
22 addition to continuing education requirements for relicensing.

23 **13. Active License Status**

24 Respondent shall at all times maintain an active license status with the CBA, including
25 during any period of suspension. If the license is expired at the time the CBA's decision becomes
26 effective, the license must be renewed within 30 days of the effective date of the decision.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated: 19 June 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

SHANA A. BAGLEY
Deputy Attorney General
Attorneys for Complainant

SF2012900785/ Stipulation.rtf

Exhibit A

Accusation No. AC-2012-28

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2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
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13 **737 Santa Ynez Street**
Sunnyvale, CA 94085

A C C U S A T I O N

14 **Certified Public Accountant Certificate**
15 **No. 58295**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy (Board), Department of Consumer
22 Affairs.

23 2. On or about February 1, 1991, the Board issued Certified Public Accountant
24 Certificate Number 58295 to Owen Nabor Yap (Respondent). The Certified Public Accountant
25 Certificate will expire on December 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Code section 5109 provides that:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

5. Code section 490 provides, in part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Code section 493 states, in part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

7. Code section 5063 requires, in part, that a licensee report in writing to the Board within 30 days all felony convictions and convictions of any crime related to the qualifications, functions or duties of a licensee.

8. Code section 5100 states, in part:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit

1 or certificate for unprofessional conduct that includes, but is not limited to, one or any
2 combination of the following causes:

3 (a) Conviction of any crime substantially related to the qualifications, functions
4 and duties of a certified public accountant or a public accountant.

5 9. Code section 5106 states:

6 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this article. The record of the
8 conviction shall be conclusive evidence thereof. The board may order the certificate
9 or permit suspended or revoked, or may decline to issue a certificate or permit, when
10 the time for appeal has elapsed, or the judgment of conviction has been affirmed on
11 appeal or when an order granting probation is made, suspending the imposition of
12 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
13 the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
14 of not guilty, or setting aside the verdict of guilty or dismissing the accusation,
15 information or indictment.

16 REGULATORY AUTHORITY

17 10. California Code of Regulations, title 16, section 99 states, in part:

18 For the purposes of denial, suspension, or revocation of a certificate or permit
19 pursuant to Division 1.5 (commencing with Section 475) of the Business and
20 Professions Code, a crime or act shall be considered to be substantially related to the
21 qualifications, functions or duties of a certified public accountant or public accountant
22 if to a substantial degree it evidences present or potential unfitness of a certified
23 public accountant or public accountant to perform the functions authorized by his
24 certificate or permit in a manner consistent with the public health, safety, or welfare...

25 COST RECOVERY

26 11. Code section 5107, subdivision (a), states:

27 The executive officer of the board may request the administrative law judge, as
28 part of the proposed decision in a disciplinary proceeding, to direct any holder of a
permit or certificate found to have committed a violation or violations of this chapter
to pay to the board all reasonable costs of investigation and prosecution of the case,
including, but not limited to, attorneys' fees. The board shall not recover costs
incurred at the administrative hearing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct: Substantially Related Convictions)**

3 12. Respondent's license is subject to disciplinary action under Code section 5100,
4 subdivision (a), in that he was convicted of crimes substantially related to the qualifications,
5 functions, and duties of a Certified Public Accountant, within the meaning of California Code of
6 Regulations, title 16, section 99. The circumstances are as follows:

7 13. On or about January 20, 2008, in a prior criminal proceeding entitled *People v. Owen*
8 *Nabor Yap*, in Santa Clara Superior Court, Case Number EE605570, Respondent was convicted
9 for violating two counts of Penal Code section 288, subdivision (c)(1), (Lewd and Lascivious Act
10 with a Child of 15), felonies. The criminal complaint alleged that on two occasions, he willfully
11 and lewdly committed a lewd and lascivious act upon and with the body and certain parts of the
12 victim with the intent of arousing, appealing to, and gratifying lust, passions, and sexual desires
13 of himself and the victim. The court ordered Respondent to serve one year in county jail and
14 three years of formal probation, register as a sex offender under Penal Code section 290, submit
15 DNA samples, have no contact with the victim, complete a psychological treatment program, and
16 to comply with other terms and conditions.

17 14. The factual circumstances surrounding the convictions are as follows: on or about
18 January 7, 2006, Respondent was the custodian of three minors, including the 15-year old victim,
19 at his house. Respondent admitted to providing the victim with alcoholic drinks and to
20 romantically kissing her.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Substantially Related Convictions)**

23 15. Respondent's license is subject to disciplinary action under Code section 490 in that
24 he was convicted of crimes substantially related to the qualifications, functions, and duties of a
25 Certified Public Accountant, within the meaning of California Code of Regulations, title 16,
26 section 99. The circumstances are more particularly set forth in paragraphs 13 and 14, above.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Report)

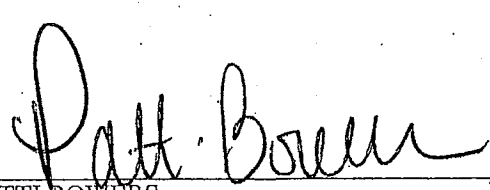
16. Respondent's license is subject to disciplinary action under Code section 5063, subdivision (a), in that within 30 days of the convictions, he failed to report to the Board his convictions for violating Penal Code section 288, subdivision (c)(1), as more particularly set forth in paragraphs 12 through 15, above. The convictions constitute reportable events because the crimes: (1) are felonies; and (2) are related to the qualifications, functions, or duties of a certified public accountant.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 58295, issued to Owen Nabor Yap;
2. Ordering Owen Nabor Yap to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107; and
3. Taking such other and further action as deemed necessary and proper.

DATED: May 11, 2012


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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